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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of) MM Docket No. 93-95
JUDY YEP HUGHES) File No. BPH-911115MT
ERIC R. HILDING) File No. BPH-911115MR
For Construction Permit for a)
New FM Station on Channel 281A)
Windsor, CA)

To: The Commission

MASS MEDIA BUREAU'S COMMENTS ON
JOINT REQUEST FOR APPROVAL OF AGREEMENT
AND DISMISSAL OF APPLICANT

1. On September 4, 1996, Judy Yep Hughes ("Hughes") and Eric R. Hilding ("Hilding") filed a joint request for approval of settlement agreement. The Mass Media Bureau hereby files its comments in support of the joint request.

2. The settlement agreement provides for the merger of the applications of Hughes and Hilding into a new corporate entity, "New Corp," the equity in which will be held equally by Hughes and Hilding. Hughes' equity interest will be in Class A stock which will provide him with control of New Corp. Hilding's equity interest will be in Class B stock which has limited voting rights. The agreement grants the applicants reciprocal options to purchase each others equity interest in the station. Hughes has an option to purchase Hilding's interest for \$100,000. If she does not do so within a specified period of time, Hilding has an option which would permit him to purchase Hughes' interest

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for \$150,000, plus the amount of loans made by Hughes to New Corp up to a maximum of \$275,000. If both options expire without being exercised, the parties agree to sell the station. The agreement further provides that the Hughes application will be amended to specify New Corp in place of Hughes as the surviving applicant. Hilding's application will be dismissed upon grant of the New Corp application. In exchange for dismissing his application, Hilding, in addition to his 50% interest in New Corp, will be hired as a consultant. The consulting agreement provides that Hilding will provide, on average, at least 10 hours of service to New Corp for which he will receive a monthly fee of \$5,000. The consultancy agreement expires after 10 months at which time New Corp may, at its option, extend it for an additional six months.

3. The settlement agreement here contemplates a merger between the applicants. Each will have a reciprocal option to purchase the others interest in the station. Settlement agreements containing reciprocal option agreements have been approved by the Commission in the past in a number of cases, including Gifford Orion Broadcasting Ltd., 9 FCC Rcd 314 (OGC 1993). Consequently, the existence of the reciprocal options does not invalidate the agreement. Moreover, because the settlement agreement contemplates a bona fide merger of the settling parties, limitations on payments to dismissing applicants do not generally apply. See Memorandum Opinion and

Order, 6 FCC Rcd 2901 (1901). ¹

5. The joint petition and supporting materials submitted by the parties conform with the requirements of Section 73.3525 of the Commission's Rules, which implements Section 311(c)(3) of the Communications Act of 1934, as amended. Specifically, the parties have established that approval of the agreement is in the public interest and that their applications were not filed for an improper purpose.

6. Accordingly, the Bureau supports grant of the joint petition for approval of the settlement agreement, dismissal of

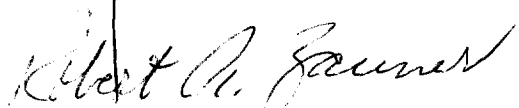
¹ The only payment Hilding is to receive in addition to his 50% interest in New Corp is for his consultancy work. However, a payment made pursuant to a consultancy agreement that is part of a settlement may be approved where, "the payment is fair compensation for services actually to be rendered rather than consideration for [the] agreement to dismiss [the] application." Gifford, 9 FCC Rcd at 315 n. 6. Here, it appears that Hilding will be required to work a minimum of 40 hours a month in exchange for his fee. Thus, even if there were not a merger, it would appear that the consultancy agreement contemplated by the parties could be approved.

the application of Hilding, grant of the application of New Corp,
upon the filing of an appropriate amendment substituting New Corp
for Hughes, and termination of this proceeding.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



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September 16, 1996

CERTIFICATE OF SERVICE

Natalie Moses, a secretary in the Hearing Branch, Mass Media Bureau certifies that she has on this 16th day of September 1996, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Comments on Joint Petition for Approval of Agreement and Dismissal of Applicant**"

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